

review of Blount County property records revealed Ms. Landman as the owner of the aforementioned Site. The inspection and a review of Ms. Landman's compliance with certain requirements of Division 4 of the ADEM Admin. Code revealed the following:

Pursuant to ADEM Admin. Code r. 335-4-4-.01(1), no person may accumulate more than 100 scrap tires, except a permitted processor, a person who registers as required in ADEM Admin. Code r. 335-4-3-.01(2), or a permitted SWDF [Solid Waste Disposal Facility]. No person may expose scrap tires to the elements for more than thirty (30) days.

At the time of the inspection, approximately 400 scrap tires were observed on the aforementioned Site without a valid scrap tire processor's permit, a Class One Receiver's certificate of registration or a SWDF permit. Moreover, the scrap tires appeared to have been exposed to the elements for more than thirty days. The amassing or gathering of scrap tires on the aforementioned property without the proper authorization from the Department constitutes a STS.

6. On September 16, 2019, the Department issued to Ms. Landman a Notice of Violation (hereinafter "NOV") requiring abatement and closure of the STS and the submittal of documentation proving that remediation of the STS was completed and that all solid waste, including scrap tires, was properly disposed or recycled. The NOV was returned to ADEM unclaimed.

7. On February 13, 2020, the Department reissued the NOV via FedEx. The NOV was delivered on February 15, 2020.

8. The Department has not received a response to the NOV.

9. On April 9, 2020, the Department received another complaint regarding the site alleging that a large pile of tires had been deliberately placed in the front yard of the Site.

10. On April 29, 2020, Department personnel conducted a follow-up site inspection and observed the STS containing approximately 400 scrap tires was still present.

11. Pursuant to Ala. Code §22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The creation, contribution to, or operation of a STS is a public nuisance per se and a menace to public health. With regards to the STS located at the Site, the Department is unaware of any irreparable harm to the environment, but it may pose a threat to human health due to the possible presence of disease vectors.

B. THE STANDARD OF CARE: Ms. Landman failed to abide by the applicable scrap tire requirements and failed to implement any corrective measures to abate the STS.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Ms. Landman has realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any attempts by Ms. Landman to mitigate potential effects upon the environment or human health that may have been caused as a result of the STS.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Ms. Landman does not have a documented history of violations of the applicable requirements of Division 335-4 of the ADEM Admin. Code.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating that Ms. Landman is unable to pay the civil penalty.

12. OTHER FACTORS: Pursuant to Ala. Code §22-40A-19(e), as amended, a fine of five dollars (\$5) per tire shall be assessed against any party who accumulates, transfers, transports, processes, or engages in unauthorized disposal of scrap tires. This fee shall be in addition to all other fines or penalties assessed. In consideration of the aforementioned statutory requirement, the Department has enhanced the civil penalty accordingly.

13. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code §22-22A-5(18)c, as amended, as well as other factors, and has concluded that a civil penalty is appropriate for the violation cited herein. The civil penalty is summarized in Attachment A, which has been made part of the Department's FINDINGS.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-11, 22-40A-4(a), 22-40A-4(b), and 22-40A-5(a), as amended, it is hereby ORDERED:

A. That, not later than forty-five days of issuance of this Order, Ms. Landman shall pay to the Department a civil penalty in the amount of \$7,000 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All payments shall include Ms. Landman's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Ms. Landman shall cease and desist from operating a STS.

C. That, within thirty days of issuance of this Order, Ms. Landman shall submit a remediation plan to the Department in accordance with the applicable requirements of ADEM Admin. Code rs. 335-4-2-.01(5) and 335-4-2-.01(6). This plan shall include a schedule for remediation and closure completion. Ms. Landman shall implement the remediation plan as approved by the Department and remove all solid waste, including scrap tires, onsite to an approved landfill unit.

D. That, within thirty days of completion of remediation activities, Ms. Landman shall document remediation activities by submitting the following information to the Department:

1. Time period in which the remediation activities occurred.
2. Total volume of tires and solid waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site taken before and after remediation.
6. Documentation that adequate sedimentation controls were employed to prevent erosion from disturbed areas resulting from the remediation activities.

7. Documentation that the site has been secured to prevent any future illegal dumping.

E. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

F. That, the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Ms. Landman for the violation cited herein.

G. That, failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Ms. Landman for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2021.

Lance R. LeFleur
Director

Attachment A

Gail Landman
Netherton Lane Scrap Tire Site
Horton, Blount County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Creation of an Unregistered Scrap Tire Site	1	\$4,500	\$500	\$0	Total of Three Factors
TOTAL PER FACTOR		\$4,500	\$500	\$0	\$5,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$2,000 ¹
	\$2,000

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	\$2,000
FINAL PENALTY	\$7,000

Footnotes

1. Based on \$5.00 per tire

* See the "Findings" portion of the Order for a detailed description of each violation and the penalty factors.